

Name: DWIGHT OLE BROUSSARD
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FILED
U.S. DISTRICT COURT

2013 JAN 23 A 11:43

DISTRICT OF UTAH

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

DEPUTY CLERK

DWIGHT OLE BROUSSARD

(Full Name)

PLAINTIFF

CIVIL RIGHTS COMPLAINT

(42 U.S.C §1983, §1985)

vs.

UNITED STATES ARMY MEDICAL
COMMAND

Case: 2:13cv00054

Assigned To : Furse, Evelyn J.

Assign. Date : 1/23/2013

Description: Broussard v. United
States Army Medical Command

DEFENDANTS

A. JURISDICTION

1. Jurisdiction is proper in this court according to:

- a. ☒ 42 U.S.C. §1983
- b. ☒ 42 U.S.C. §1985
- c. ☐ Other (Please Specify)

2. NAME OF PLAINTIFF DWIGHT OLE BROUSSARD
IS A CITIZEN OF THE STATE OF: UTAH

PRESENT MAILING ADDRESS: 1753 TEAL DRIVE
PARK CITY UT 84098

3. NAME OF FIRST DEFENDANT : UNITED STATES ARMY MEDICAL COMMAND
IS A CITIZEN OF: WASHINGTON D.C.
(City and State)

IS EMPLOYED AS the Utah Army National Guard Medical Command under the control to
the Army Medical Command in Washington D.C.

Was the defendant acting under the authority or color of state law at the time these claims occurred?

YES X NO ____.

If your answer is "YES" briefly explain.

The Utah Medical Command is responsible for all Fit for Duty Physicals for all the Soldiers in the state of Utah. It is under the control of Utah Army National Guard and the Army Medical Command.

(Use additional sheets of paper if necessary.)

B. NATURE OF CASE

1. Why are you bringing this case to court? Please explain the circumstances that led to the problem?

I am bringing a Medical Malpractice Suit against the United States, specifically the Medical Command for failure to inform me of elevated Liver Enzymes in 1999 and 2004. This failure to inform lead to my not being tested for Hepatitis C which lead to Liver Failure and the need for a Liver Transplant.

As a member of the UTAH ARMY NATIONAL GUARD (UTARNG), since 1982 I was required to have retention physicals about every 5 years. After I was diagnosed with Hepatitis C and Liver Failure I contacted the Human Resources Command and requested a copy of my last 3 Physicals performed by the UTARNG. Upon reviewing the lab results from 1999 and 2004, I noted that my Liver test were elevated. My ALT was 119 U/L, normal up to 37 U/L and my AST was 203 U/L, normal up to 45 U/L. These results were 3.2 and 4.5 time above normal respectively. MY test in 2004 were slightly elevated as have my test been over the past 2 years. The UTARNG Medical Command did not inform me of these abnormal results in 1999 or 2004. It is my feeling that had I been informed in 1999 of the elevated results and had I followed up with a Primary Physician and received further testing, I would have been diagnosed with Hepatitis C and may have been able to save my Liver from further damage. According to DR. Box of the University of Utah Medical Center and head of the Liver Transplant program, I had Hepatitis C for at least 20 years before 2011. The lab test performed by the UTARNG was a Chemistry Panel of 20 test. They only needed about 5 results that were required by the Army. They were doing test they didn't need to because it was cheaper than doing only the test needed. It is my belief that if you do 1 test or 20 test, you need to check all results for abnormalities. The State Surgeon of the UTARNG did an extensive review of my medical records and could not find any mention of me being notified to follow up on the abnormal results. See attached Memorandum from the UTARNG State Surgeons office.

C. CAUSE OF ACTION

I allege that my constitutional rights, privileges or immunities have been violated and that the following facts form the basis for my allegations: (If necessary you may attach additional pages)

a. (1) Count I: Medical Malpractice by the UTARNG Medical Command leading to Liver Failure and the need for a Liver Transplant to live.

(2) Supporting Facts: (Describe exactly what each defendant did or did not do. State the facts clearly in your own words without citing legal authority or arguments.)

In March of 2011 I developed an Upper Gastrointestinal Bleed. I was seen in the Emergency department where I underwent multiple test and had an Upper GI scope done. The results of the test and scope were that I had a low Hematocrit and 3 Esophageal Varices that were banded to prevent further bleeding. I was admitted to the Intermediate Care Unit (IMCU) for close observation. During my stay in the IMCU, I received 2 units of blood because my Hematocrit had dropped to 23%. The Attending MD that admitted me to the hospital came by and informed my wife and I that I had Hepatitis C and Liver Failure and that I would need a Liver Transplant sometime in the future. Before my admission to the Hospital I did not have any notable signs of Hepatitis C or Liver failure.

The Medical Command performed periodic physicals on all soldiers in the State of Utah. The physicals are used to determine a members fitness for duty. Any abnormal results from the physical were required to be follow up by a private Physician and treatment started if necessary. If a Soldier had High Blood Pressure, he/she were required to see his/her private MD and start treatment, then report the treatment plan back to the Medical Command for further follow up. Failure to follow up with a MD and not get necessary treatment could be grounds for discharge from the UTARNG because the Soldier would be considered Not Fit for Duty. The Soldier did not see his/her medical records and relied on the Medical Command to inform them of any abnormalities. If you weren't informed of any abnormal results your were fit for duty.

In my case the Medical Command did not inform me of the abnormal results in 1999 and 2004. This led me to believe I did not have any problems that needed to be followed up on by a private Physician. I did not know I had the disease until I was admitted to the hospital in March 2011.

Any Physician in private practice would have reviewed the lab results and followed up on the elevated Liver Enzymes by having more test done. Mainly a designated test for Hepatitis C.

D. INJURY

1. How have you been injured by the actions of the defendant(s)?

I was diagnosed with Hepatitis C and Liver Failure in March 2011. In 1999 and 2004 I had my annual Army Physicals. On the lab results from both physicals my Liver Enzymes were elevated. The Medical Command did not inform me of the elevated results or advise me to follow up with a private Physician for further testing. Had the Medical Command informed me of the results and the need for follow up testing, I may not be needing a Liver Transplant to live. Had I followed up in 1999, I would have found out I had Hepatitis C. I may or may not have had Liver damage at that time. I could have started anti viral drugs that might have cured the Hepatitis C. By curing the Hepatitis C, I would not have gone into Liver failure as I am now and requiring a Liver Transplant.

E. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

1. Have you filed other lawsuits in state or federal court that deal with the same facts that are involved in this action or otherwise relate to the conditions of your imprisonment?

YES X NO ____ . If your answer is "YES," describe each lawsuit. (If there is more than one lawsuit, describe additional lawsuits on additional separate pages, using the same outline.)

a. Parties to previous lawsuit:

Plaintiff(s): DWIGHT OLE BROUSSARD

Defendant(s): DEPARTMENT OF THE ARMY
UNITED STATES ARMY CLAIMS SERVICE
C/O LTC DAVID O. ANGLIN
ACTING CHIEF, TORT CLAIM DIVISION
(SEE ATTACHED LETTER)

b. Name of court and case or docket number: 12-061-T091

c. Disposition: CLAIMED DENIED BY LTD DAVID O. ANGLIN

d. Issues raised: "U.S. service members are not proper claimants for personal injury or death for incidents which 'arise out of or in the course of activity incident to service' ". In *Feres v. United States* the Supreme Court stated "There have been exceptions to the *Feres* Doctrine where active duty members have been allowed to sue for injuries when the court found that civilians could have been harmed in the same manner under the same circumstances in which the service member's injuries occurred".

e. When did you file the lawsuit? Received at Fort Meade Maryland on 20 September 2012.

Date Month Year

f. Denied 11 December 2012

2. Have you previously sought informal or formal relief from the appropriate administrative officials regarding the acts complained of in Part C? YES X NO ____ . If your answer is "YES" briefly describe how relief was sought and the results. If your answer is "NO" explain why administrative relief was not sought.

I filed a Tort Claim with the United States Army Federal Tort Claims act (FTCA) (28 U.S.C. 2671-2680). The claim was denied by the Judge Advocate General's office at Fort Meade Maryland on 11 December 2012.

F. REQUEST FOR RELIEF

1. I believe that I am entitled to the following relief:

I believe that because the Medical Command did not tell me of my elevated liver enzymes in 1999 and 2004 I was not treated for a potentially life threatening disease. The symptoms of Hepatitis C and Liver failure are usually mild and not noticed by the patient. Most of the time the diagnosis is made because the patient presents with vague complaints leading the Physician to check for Hepatitis C in high risk individuals; IV drug abusers, people who share personal items, people with tattoo's and medical allowed the Hepatitis C virus to slowly destroy my liver and cause Liver Failure which requires a transplant to repair.

I am seeking monetary compensation for this medical malpractice issue. I am seeking monies to help me pay my future bills, medical cost, medical insurance, transportation to and from the hospital, multiple hospital stays in the future, the cost of the transplant (\$200-500,000), the cost of medicines and medical supplies. I am currently still working as a Registered Nurse. I have had to cut down from three 12 hours shifts a week to two 12 hours shifts a week because I do not have the physical stamina to work 3 days in a row any more. Sometime in the future I will have to stop working all together because of the Liver Failure.

The amount I am seeking is \$25,000,000. I feel this is an adequate amount to cover all the pain and suffering my family and I will have to go thru in the next few years. It also covers all expenses we will incur over the next few years. It will cover the \$1000 plus it will cost me to keep my family medically insured each month.

As a result of this issue, the UTARNG Medical Command has made changes in their policies regarding abnormal test results. They have quit doing un-necessary lab test and they have instituted a procedure in writing on how to inform a Soldier of the need for further follow up and how to follow up on the Soldiers private Physicians

recommendations. Unfortunately this is too late for me, but I have made a difference in someone's life somewhere.

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he/she is the plaintiff in the above action, that he/she has read the above complaint, and that the information contained therein is true and correct.
28 U.S.C. §1746; 18 U.S.C §1621.

Executed at _____ on 23 Jan 2013.
(Location) (Date)

Dwight Ale Brumard

Signature

APPENDIX D

Name: DWIGHT OLE BROUSSAD

Address: 1753 TEAL DRIVE, PARK CITY UT 84098

Telephone: 801-598-7744

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH - CENTRAL DIVISION**

Plaintiff, :

DWIGHT OLE BROUSSARD

v. : CERTIFICATE OF SERVICE

**Defendant(s). UTARNG MEDICAL
COMMAND**

Civil No:

I hereby certify that a copy of the foregoing Tort Claim

(Name of pleading)

was mailed/delivered to JUDGE ADVOCATE GENERAL'S OFFICE at 1776

MINUTEMAN DRIVE, DRAPER UTAH


(choose one)

(Name of defendant(s) or (Address)

defendant's attorney)

on 23, 20 13.

(Date)


(Signature of person mailing document)
DWIGHT OLE BROUSSARD